

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROB SHANAHAN,

Plaintiff,

- against -

AHEAD PRODUCTS, INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Rob Shanahan (“Shanahan” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Ahead Products, Inc. (“Ahead” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two (2) copyrighted photographs. One of Tommy Lee and one of Mick Fleetwood owned and registered by Shanahan, a music photojournalist. Accordingly, Shanahan seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant does business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Shanahan is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 1044 Harrison Avenue, Venice, California, 90291. Shanahan's photographs have appeared in many publications around the United States.

6. Upon information and belief, Ahead is a corporation duly organized and existing under the laws of the State of California, with a place of business at 9420 Reseda Blvd., #350 Northridge, California, 91324. At all times material hereto, Ahead has owned and operated a website at the URL: www.bigbangdist.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Shanahan photographed Tommy Lee and Mick Fleetwood playing the drums (the "Photograph"). A true and correct copy of the Photographs are attached hereto as Exhibit A.

8. Shanahan is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

B. Defendant's Infringing Activities

9. Upon information and belief, Ahead prominently featured the Tommy Lee Photograph on the Website. Upon information and belief, Ahead created an Advertisement that prominently featured the Mick Fleetwood Photograph. A true and correct copy of Website Photograph and Advertisement Photograph is attached hereto as Exhibit B.

10. Ahead did not license the Photographs from Plaintiff, nor did Ahead have Plaintiff's permission or consent to publish the Photographs.

11. The Photographs were registered with Copyright Office and were given Copyright pending Registration Number 1-3803606101. See Exhibit C

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST AHEAD)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Ahead infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website and Advertisement. Ahead is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Ahead have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST AHEAD
(17 U.S.C. § 1202)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.
19. Upon information and belief, on the Website and Advertisement, Ahead intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.
20. The conduct of Ahead violates 17 U.S.C. § 1202(b).
21. Upon information and belief, Ahead's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.
22. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Ahead intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photographs. Ahead also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photographs.
23. As a result of the wrongful conduct of Ahead as alleged herein, Plaintiff is entitled to recover from Ahead the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Ahead because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

24. Alternatively, Plaintiff may elect to recover from Ahead statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Ahead be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Ahead be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph.
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;

7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
July 11, 2016

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